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March 18, 1988

Honorable James C. Miller III  
Director  
Office of Management and Budget  
Old Executive Office Building  
17th Street and Pennsylvania Avenue  
Washington, D.C.

Dear Director Miller:

As you may recall, Section 502 of the Intelligence Authorization Act for Fiscal Year 1988 mandated that the Director of the FBI and the Director of the Office of Personnel Management (OPM) conduct a study to ascertain the effect on recruitment, retention, and operations of employees in the New York Field Division of the FBI caused by the unusual living expenses associated with such employment. A study entitled "Report on Recruitment, Retention and Operational Problems Facing the New York Office of the Federal Bureau of Investigation Caused by the High Cost of Living, and a Plan for Remedies," was prepared by the FBI and OPM and was approved by the FBI on February 19, 1988, by the Attorney General on March 1, 1988 and by Director Horner, OPM, on March 2, 1988. It was forwarded to the Office of Management and Budget (OMB) on March 4, 1988. On March 14, 1988, Gerald R. Riso, Associate Director for Management, OMB, sent a letter to John E. Otto, Executive Assistant Director, FBI, (copy attached) advising that the joint FBI/OPM report is not persuasive that special action for all Agents in the New York Office is warranted and that the FBI should build a better case.

(Full report  
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Mr. Riso's letter specifically asked for additional information relating to historical rates of turnover in the largest of FBI offices, comparisons of FBI resignation rates with other law enforcement agencies in New York City, and data on caseloads carried by New York Office Special Agents compared to caseloads of Agents in smaller FBI offices. These requests

- 1 - Mr. Otto - Enclosure
- 1 - Mr. Revell - Enclosure
- 1 - Mr. Glover - Enclosure
- 1 - Mr. Ahlerich - Enclosure
- 1 - Mr. Sharp - Enclosure
- 1 - Mr. Geer - Enclosure

- 1 - Mr. Clarke - Enclosure
- 1 - Mr. Garrett - Enclosure
- 1 - Mr. O'Brien - Enclosure
- 3 - Mr. Rissler - Enclosure
- 1 - Mr. Hooks - Enclosure
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NOTE: This letter is prepared based on analysis of the OMB position, review of Section 502, and discussion with staff members of the Senate Select Committee on Intelligence.  
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SSA JOHN S. HOOKS, JR  
ROOM 7240, TL-245

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relate only tangentially to the report requested by Congress of the FBI and OPM. Parts of these questions have already been addressed by Congress in past years and have been stipulated in earlier findings or acknowledged in the conference report language to Section 502. We are, however, providing answers to these questions by separate communication and we will promptly furnish a response to Mr. Riso.

Through Section 502, Congress ordered a study and report be prepared jointly by the FBI and OPM to address the effect on recruitment, retention, and operations caused by the high cost of living in the New York City area. Congress noted Administration officials promised to put forth a good faith effort to come up with a solution. In response, the FBI and OPM developed four viable solutions to address the problem in New York. In descending order of FBI preference they were: removal of the FBI from the General Schedule and Classification requirements of Title 5, United States Code; a cost-of-living allowance for the New York Office; a demonstration project for the New York Office; and special rates for New York Office employees. In the spirit of cooperation and good faith, the FBI set aside its two preferred remedies, and agreed with OPM's recommended two-part remedy which would provide a demonstration project utilizing mobility and retention allowances for employees subject to directed transfer (primarily Agents) and special rates for most support personnel.

I have carefully reviewed Section 502 of the Act and its legislative history. It is my opinion that the joint report complies with the Congressional mandate and makes a strong case within the parameters established by Congress. The FBI, OPM, and Department of Justice (DOJ) fully recognize that the high cost of living and related problems affect all federal agencies in New York City. Congress also recognized this fact but has, by statute, ordered Director Horner and me to submit a study to determine the effect of high living costs on recruitment, retention and operations of the FBI's New York Office.

Congress said in the conference report to Section 502 that the financial burden on Agents assigned to the New York Office "inevitably undermines the effectiveness of the New York Office" and that FBI employment "impose[s] burdens in excess of those imposed by other Federal employment in the New York area." The conferees also noted that all Federal employees face the same high cost of living in the New York City area, and, although the Administration sought to minimize inequities, that the FBI

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should be provided with some type of relief because "circumstances of FBI recruitment, assignment and operations are generally more onerous than those of other Federal employees in the New York area." In preparing the joint report, OPM was very cognizant of the Administration concern and sought to minimize inequities among the various Federal agencies that a remedy for the FBI might impose. In fashioning a remedy, we have addressed this Administration concern in a very reasonable manner. Special rates is a measure currently available to all federal agencies. The demonstration project is also available by statute to all agencies, except the FBI and a few intelligence agencies which are specifically exempted. In brief, the FBI and OPM have recommended nothing more than what is already available to the vast majority of government agencies.

Through contacts with the Congressional Committee staffs, my Congressional Affairs Office has learned that the Committees believe the Director of the FBI and the Director of OPM may be in violation of Section 502 because we have not submitted the requested report. On February 1, 1988, I wrote Congress advising there would be a short delay in submitting the report to allow for Administration review and comment. That process was expected to take no more than a few weeks. We are now almost seven weeks late. Although there is no penalty for violating the Section, I am concerned that the FBI's excellent relationship with Congress will be jeopardized. As Director of the FBI and a former judge, this failure to comply with the law troubles me.

When I became Director of the FBI, I made correcting the problems of the New York Office, which is twice as large as the next largest FBI office and of critical importance to the protection of the United States and enforcement of its laws, a priority issue. Time is of the essence in dealing with this problem. The FBI has authorization hearings with two of our oversight committees scheduled as follows: March 22, 1988, House Permanent Select Committee on Intelligence; March 29, 1988, Senate Select Committee on Intelligence.

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On March 17, 1988, I testified before the House Committee on the Judiciary, Subcommittee on Civil and Constitutional Rights as part of the annual authorization/oversight hearings for the FBI. In response to a question from Chairman Don Edwards regarding the status of the study, I said that I was consulting with OMB and DOJ in order to reach a satisfactory conclusion. Chairman Edwards expressed his deep concern over problems caused by the high cost-of-living in New York City, noting that we should seek a resolution as soon as possible. I believe the FBI and OPM have complied with the mandate of Congress and that the prepared report as agreed upon by the FBI, OPM, and DOJ should be forwarded immediately to Congress. I respectfully request that you expeditiously reconsider the position of OMB as set out in Mr. Riso's letter of March 14, 1988.

Sincerely yours,

William S. Sessions  
Director

Enclosure

- 1 - Attorney General - Enclosure
- 1 - Deputy Attorney General - Enclosure
- 1 - Randy I. Levine - Enclosure  
Associate Deputy Attorney General
- 1 - Constance J. Horner - Enclosure  
Director  
Office of Personnel Management  
1900 E. Street NW  
Washington, D.C. 20415
- 1 - Gerald R. Riso - Enclosure  
Associate Director for Management  
Office of Management and Budget
- 1 - James M. Fox - Enclosure  
Assistant Director-in-Charge  
Federal Bureau of Investigation  
New York, New York